

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WAUNITA SMITH)	
Claimant)	
)	
VS.)	
)	
ROSSVILLE VALLEY MANOR/ CORPORATE RESOURCE MANAGEMENT)	
Respondent)	Docket Nos. 268,256 &
)	1,001,853
AND)	
)	
LEGION INSURANCE CO./KANSAS GUARANTEE INSURANCE ASSOCIATION and LIBERTY MUTUAL INSURANCE CO.)	
Insurance Carriers)	
)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	
)	

ORDER

Respondent and one of its insurance carriers, Legion Insurance Company/Kansas Guarantee Insurance Association (Legion/KGIA) requested review of the December 2, 2005 Award by Administrative Law Judge Bryce D. Benedict. The Board heard oral argument on March 7, 2006.

APPEARANCES

Roger D. Fincher, of Topeka, Kansas, appeared for claimant. J. Scott Gordon, of Overland Park, Kansas, appeared for respondent and its insurance carrier Legion/KGIA. Lynn M. Curtis, of Overland Park, Kansas, appeared for respondent and its insurance carrier, Liberty Mutual Insurance Company (Liberty Mutual). Darin M. Conklin, of Topeka, Kansas, appeared for the Kansas Workers Compensation Fund (Fund).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. During oral argument to the Board, the parties entered into several additional stipulations:

The parties agreed that claimant's preinjury average weekly wage was not an issue on appeal and that the ALJ's determination that claimant's gross average weekly wage was \$550.37 was acceptable for both docketed claims.

The parties agreed that the Fund should be dismissed as a party to these proceedings, as the ALJ and the Board have jurisdiction to order reimbursement by one of respondent's insurance carriers for payments made by the other should the finding of their respective liabilities so warrant and because the Fund does not need to be impleaded as a party in order for a respondent and/or insurance carrier to obtain reimbursement from the Fund, if appropriate, under K.S.A. 44-534a(b).

Counsel for respondent and Liberty Mutual announced that Liberty Mutual would not be seeking reimbursement from either Legion or KGIA for the cost of the preliminary medical treatment benefits and temporary total disability compensation it paid to claimant.¹

ISSUES

The Administrative Law Judge (ALJ) found that the April 20, 2001 accident was the primary source of claimant's disability and ordered respondent and Legion/KGIA to pay all medical expenses, temporary total disability benefits and permanent partial disability benefits to which claimant is entitled. The ALJ also found that the only physician to assign claimant a functional disability rating was Dr. Daniel Zimmerman. However, the ALJ held that his 27 percent disability rating should be disregarded because Dr. Zimmerman did not properly follow the dictates of the *AMA Guides*². Nevertheless, the ALJ, by utilizing and interpreting the *AMA Guides* himself, found that claimant had, at best, established a DRE Category II 5 percent lumbar spine impairment. Claimant asserted a claim for a permanent total disability and/or work disability. The ALJ found that claimant was not permanently totally disabled but was entitled to a work disability. The ALJ found that claimant did not make a good-faith effort to find employment and imputed a post-injury wage to her of \$240 per week, which represented a 56.4 percent wage loss. Averaging the task loss opinions of Drs. Glenn Amundson and John Clough, the ALJ found that claimant had a 66.6 percent

¹This would not affect respondent's or either insurance carrier's ability to utilize those payments as a credit against any award for claimant.

²American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

task loss. This, averaged with the 56.4 percent wage loss, resulted in a 61.5 percent work disability.

Respondent and Legion/KGIA request review of the ALJ's finding that claimant's April 20, 2001 accident was the source of her disability. They argue that claimant was able to return to work and continued working for respondent until her last date of accident, January 3, 2002. Accordingly, they assert that medical expenses incurred after that date, temporary total benefits paid after that date, and any permanent partial or permanent total disability benefits owed to claimant should be attributed to that date of accident and assessed to Liberty Mutual, the insurance carrier who had the coverage on that date. Respondent and Legion/KGIA also request that they be reimbursed by Liberty Mutual or the Fund for any payments of medical expenses or temporary total benefits paid by them on these claims pursuant to the ALJ's preliminary hearing Order of February 21, 2002. Respondent and Legion/KGIA also argue that if the Board finds that claimant is entitled to a work disability, it should utilize a 27 to 32 percent wage loss as set out in the report and testimony of Mary Titterington and a 35 percent task loss³ as opined by Dr. Clough.

Respondent and Liberty Mutual argue that the January 3, 2002 accident caused claimant to suffer only a temporary aggravation of the significant permanent injuries she received on April 20, 2001, and June 14, 2001. Accordingly, they argue that Legion/KGIA is not entitled to be reimbursed from Liberty Mutual for medical expenses and temporary total benefits paid after January 3, 2002. Instead, respondent and Legion/KGIA should be liable for the entire award. Respondent and Liberty Mutual request that the ALJ's Award be affirmed in its entirety.

Claimant contends she is permanently and totally disabled. In the alternative, claimant alleges she made a good-faith effort to become employed after respondent did not offer her a position after her release from treatment. Accordingly, claimant argues the ALJ should not have imputed a wage to her and that she has a 100 percent wage loss. Claimant also asserts that the Board should adopt Dr. Zimmerman's opinion that she has a 91 percent task loss, which, when averaged with a 100 percent wage loss, calculates to a 96 percent work disability. In addition, claimant argues that it was improper for the ALJ to go outside the record in finding claimant's functional impairment is 5 percent and instead the ALJ should have accepted the opinion of Dr. Zimmerman, as it was the only expert medical opinion of claimant's functional impairment and he testified that his opinion was pursuant to the *AMA Guides*. In the alternative, claimant contends the ALJ improperly applied the *AMA Guides* and that a proper analysis of the *AMA Guides* requires a minimum of a 10 percent impairment rating for claimant's injuries.

³ Although respondent and Legion/KGIA's brief states that Dr. Clough testified to a 35 percent task loss, in fact Dr. Clough testified that claimant was unable to perform 11 of the 17 tasks listed, which calculates to a 65 percent task loss.

The Fund, before it was dismissed, requested that the Board affirm the decision of the ALJ or, in the alternative, find that the Fund bears no liability for the benefits paid by Legion/KGIA resulting from the preliminary hearing held February 20, 2002.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds and concludes that the Fund should be and is hereby dismissed from these two docketed claims; that claimant has established that she has a 27 percent impairment of function; that claimant is not permanently and totally disabled but instead is capable of performing substantial gainful employment; that claimant made a good-faith effort to retain her employment with respondent post-injury and thereafter made a good-faith job search; and that claimant is therefore entitled to an 83.3 percent permanent partial disability award based upon a 100 percent wage loss and a 66.6 percent task loss. Except for these modifications and an acknowledgment that the ALJ was incorrect when he stated in his Award order that the surgery Dr. Amundson ultimately performed was the same procedure the Doctor had originally contemplated performing, the Board otherwise agrees with and adopts the findings and conclusions of the ALJ.

Claimant suffered three compensable accidents while working for respondent, the first on April 20, 2001, the second on June 14, 2001, and the third on January 3, 2002. During the period encompassing the first two dates of accident, respondent was insured by Legion/KGIA. As of January 1, 2002, respondent's workers compensation insurance coverage was provided by Liberty Mutual.

Claimant first began working for respondent when she was in the 10th grade of high school. At some point she received training as a certified nurses aide (CNA) and began working for respondent as a CNA. In 1995, she left her employment with respondent and began working first for a grocery store and then as a home health care worker. She returned to work for respondent in 1999 as a full-time CNA earning \$10.92 per hour.

Claimant had two work-related incidents while working for respondent before her April 20, 2001 accident. In 1991, she was treated for a back sprain. She had some physical therapy, and the problem resolved. Again in 1995, while claimant was pregnant, she injured her back while working at respondent. She was seen by an orthopedic surgeon and received physical therapy. She testified that after the birth of her child, she was fine.

In regard to the claims involved in these cases, claimant testified that on April 20, 2001, during a tornado warning, she was removing a resident from his room in his bed. The foot board came apart from the bed and she fell, landing on her buttocks and low back. The next morning she went to the emergency room, where she was treated by Dr.

David Jones. She suffered injuries to her middle and low back, with pain shooting into her legs, and missed about five or six weeks of work.

Dr. Jones diagnosed claimant with a severe low back strain with a suspected disc injury. Claimant was sent to physical therapy. The physical therapy made her symptoms worse, and a MRI was scheduled. The MRI scan showed three bulging discs but no focal protrusion of disc material on a nerve root. She was released to return to work on June 4, 2001, with restrictions of no lifting more than 10 pounds and no carrying more than 25 pounds, with only occasional bending and stooping. Squatting and standing were allowed while carrying up to 10 pounds. She was allowed to push carts but was to have limited pulling.

Claimant returned to light duty work at respondent and, on June 14, 2001, she was injured while working on the Alzheimer's unit. A resident got up from the table and started to fall, grabbed her arm, and both of them fell. Claimant again injured her middle and low back. She did not lose any significant time from work after the June 2001 accident but returned to full-time work with restrictions. On July 24, 2001, another MRI was taken of claimant's low back. The results showed that a right-sided pericentral disc protrusion was compromising the neural canal and the nerve root canal at L5-S1. The MRI also showed minimal annular bulging present at L4-5 and L5-S1. Dr. Jones continued to treat claimant, and she continued going to physical therapy.

Claimant's back felt worse for a short time after the June 2001 accident, and then went back to the way it felt after the April 2001 accident.

Q. Now how did that pain change over your therapy between April of '01 and June of '01 when you had the second accident? Was your pain going away?

A. No, it was there.

Q. Was your leg pain going away? Was your back pain going away?

A. It was decreasing, yes.

Q. Were you getting less pain in your left leg?

A. Yes.

Q. Tell me what happened after June of '01? Was that pain back to where it was after the April of '01 injury?

A. Yes.

Q. In the same places?

A. Yes.

Q. Would it be safe to say that sometimes your back was bothering you more than your legs?

A. Yes.

Q. And sometimes your legs were bothering you more than your back?

A. More in my back than my legs most of the time.⁴

While performing physical therapy in September 2001, claimant suffered an exacerbation of her back pain. She was sent to Dr. Amundson, a board certified orthopedic surgeon, for treatment. Dr. Amundson first saw claimant on October 10, 2001, and he ordered a third MRI, which showed mild to moderate spondylitic changes with moderate central stenosis at the L4-L5 disc level. After viewing the results of this MRI and noting the failure of epidural steroid injections, Dr. Amundson recommended three level laminotomies. He returned her to work at a sedentary level until surgery could be performed.

Claimant was scheduled for surgery, but the surgery was cancelled because of Dr. Amundson's schedule. The surgery was then rescheduled but, according to claimant, her file was taken over by a new claims adjuster with Legion/KGIA and the surgery was cancelled. Claimant was thereafter sent to several doctors for evaluations and treatment. Dr. John Clough saw her on November 27, 2001, and diagnosed her with low back pain and radicular symptoms. He suggested that claimant be taken off work for a period, but claimant's financial situation did not make that possible. He recommended conservative treatment of claimant's symptoms. He did not exclude a surgical option but thought her outcome would be guarded with decompression surgery.

Claimant was next seen by Dr. Steven Hendler on December 13, 2001, who ordered an EMG done on claimant. In reviewing the results of the EMG, Dr. Hendler recommended the surgery previously suggested by Dr. Amundson. Claimant was also seen by Dr. Lynn Curtis on December 14, 2001, at the request of her attorney. Claimant testified that Dr. Curtis told her she was unable to work. In Dr. Curtis' report, he stated that he saw no reason why claimant should not go forward with the surgery recommended by Dr. Amundson.

In the meantime, claimant continued to work for respondent with accommodations. On January 3, 2002, claimant went to the store for supplies for the kitchen staff. As she got out of her truck, she hit an icy spot, her foot slipped, and she fell. She did not return

⁴R.H. Trans. at 50.

to work after the January 2002 injury. She was eventually returned to Dr. Amundson for treatment in April 2002. Dr. Amundson performed four surgical procedures on claimant and released her from treatment as having reached maximum medical improvement (MMI) on April 2, 2004, with permanent restrictions.

After being released from treatment by Dr. Amundson, claimant talked to Wendy Reed at respondent about going back to work. Ms. Reed told claimant that her job was not available. Claimant then applied for unemployment and started looking for work. Claimant was on unemployment for two to three months. After that, she applied for social security disability benefits. Claimant was approved for social security as soon as the paperwork was in and started receiving benefits of \$915 per month in December 2004.

Richard Santner is a vocational rehabilitation counselor who visited claimant on February 20, 2003, at the request of her attorney. He and claimant reviewed her work history covering the 15 years before her work injury and put together a list of 22 job tasks she performed during that period.

Mr. Santner also reviewed medical records of Dr. Kimball Stacey and Dr. Amundson and opined that claimant is very marginally employable. He believed that she would only be able to do part-time work, working 20-25 hours per week and earning \$6 to \$7 per hour. He did not believe claimant could work full time. He did not know of jobs where claimant would be able to alternate sitting and standing to the extent the medical restrictions discuss. Mr. Santner was not aware of any effort being made by claimant to find employment and opined that claimant had a 100 percent wage loss.

Mary Titterington is a vocational rehabilitation counselor and consultant who visited with claimant by telephone on August 31, 2005, at the request of respondent and Legion/KGIA. In preparing her report, she reviewed medical records from Dr. Zimmerman, claimant's functional capacity evaluation (FCE) evaluation, Dr. Stacey's evaluation, Dr. Amundson's records and Mr. Santner's vocational task analysis.

Ms. Titterington testified that claimant made a fairly active job search in terms of number of contacts. She told claimant, however, that she was making a passive job search versus an active job search. Claimant told her she was sending resumes by mail, which is statistically the least effective means of finding a job. Claimant first told Ms. Titterington that she spent 3 and 1/2 hours a week searching for work, but later indicated it was 15 to 20 hours per week. Ms. Titterington believes that a person looking for a job should spend a minimum of 25 hours a week researching, contacting potential employers and talking to friends. Ms. Titterington refused to state an opinion on whether claimant made a good-faith job search but stated that in her professional opinion, claimant's job search could have been more active and directed. On cross-examination, Ms. Titterington admitted that she did not know whether claimant had followed up on résumés she sent out, made phone calls or applied in person for some jobs. She also admitted that at times,

claimant would have no choice but to just send a résumé, such as in answering a newspaper advertisement with a post office box listing only.

Ms. Titterington believed that claimant could earn a wage between \$6 and \$8.52 per hour. She used Dr. Amundson's report and restrictions in making her opinion about wage-earning ability and job-search recommendations. She said that using Dr. Zimmerman's restrictions would make claimant unemployable because of the severity of his restrictions concerning alternating positions.

Claimant has a high school diploma and a CNA certificate, but no higher education. She does not believe she is physically able to return to being a CNA. She applied for 10 to 12 jobs a week, using the Internet and calling people. At the September 15, 2005 Regular Hearing, she submitted a list of contacts she made which contained the names of 131 potential employers. She stated she posted her résumé with Kansas Job Link. She has also made phone calls to potential employers and filled out applications. She stated she has been looking for full-time work making close to what she was making while working for respondent. She stated she fills out applications and tells them her restrictions. She has had face-to-face talks with potential employers while turning in applications, but she has not been called back for an interview. She has not turned down any offers of employment. The Board finds claimant established that she made a good faith job search.

Claimant testified she believes the combination of all three accidents caused her problems, rather than one of the three being a major contributor. She also testified, however, that after the January 3, 2002 fall, she felt more pain than before she fell but that after a week or so, the pain diminished to the level it was before the fall.

Before January 3, 2002, claimant had mid to low back pain that radiated into her buttocks and right leg, and once in a while into her left leg. Claimant said that after the January 2002 injury, her symptoms were temporarily worse but went back to what they were before. She states she is always in pain. The pain is centralized in her middle to lower back. She takes one 800 mg. of Ibuprofen every four hours. At the present time she is not under any medical care.

Claimant requested that Dr. Amundson be authorized to treat her injuries, and the ALJ so ordered on February 21, 2002. Claimant saw Dr. Amundson on April 3, 2002, and his report notes:

She has basically been lost to our practice since September. We had recommended a decompression for her stenosis at L4-5, clinically manifested as L5 nerve root symptoms, and a herniated disc at L5-S1 eccentric to the right with a swollen right nerve root. After we requested authorization for scheduling she has seen no less than 6 physicians and shuffled through multiple injections, physical therapy, rehab programs, all with no relief. She has now been returned by court

order to our office to pursue appropriate treatment. Since last being seen the only thing that has changed is her back pain component seems to be more significant than previous. She is also exhibiting more chronic pain behaviors, most likely due to the fact that her appropriate surgical treatment has been delayed by 6-8 months.⁵

Dr. Amundson then ordered a diskogram to define claimant's pain levels. After seeing the results of the diskogram, he suggested claimant have a decompression followed by intradiscal electrothermal (IDET) surgery, but told her it could have only a 35 to 50 percent success rate. Claimant opted to have the decompressive procedure and IDET surgery, which was done on May 30, 2002. Claimant was sent to physical therapy after this procedure, but when aggressive therapy was attempted, her back pain returned. Dr. Amundson, however, released her from treatment as being at MMI on November 22, 2002.

Claimant returned to see Dr. Amundson on March 19, 2003, complaining of increased back pain. At that time, Dr. Amundson opined that claimant's three level IDET failed. A second diskogram was done on April 21, 2003. On June 19, 2003, claimant underwent an anterior interbody fusion at L3-4, L4-5 and L5-S1. She was again sent to physical therapy, which again aggravated her condition. Dr. Amundson discontinued her physical therapy in February 2004 and released her as MMI on April 2, 2004.

Restrictions placed on claimant by Dr. Amundson were that sitting should be on an occasional basis. Bending should be avoided; and squatting, kneeling, climbing and reaching should be done only occasionally. He said she could sit and stand on a frequent basis. He limited her to pushing and pulling on an occasional basis. When given a task list prepared by Mr. Santner, Dr. Amundson opined that claimant was unable to perform 15 of the 22 tasks for a 68 percent task loss. When asked whether, for workers compensation purposes, claimant is permanently totally disabled, Dr. Amundson stated: "I think for work comp purposes by their definitions that she is—could function at a sedentary—in a sedentary capacity."⁶

Dr. Amundson stated that in October 2001, surgery was just an option and that he proposed three-level laminotomies because he "felt that her MRI findings correlated with her physical exam findings and complaints. And I offered her surgery for those complaints, yes."⁷ Dr. Amundson was not proposing a diskogram of claimant's back pain in October 2001. At that time he was recommending decompressing the nerve roots for predominant leg pain.

⁵Amundson Depo., Ex. 3 at 17.

⁶Amundson Depo. at 11.

⁷*Id.* at 24.

Dr. Amundson was not aware of claimant's June 2001 and January 2002 accidents until his deposition was taken. He reviewed a MRI done on January 22, 2002, and did not find a significant difference from the results of the MRI done on October 16, 2001. When asked, in reviewing the results of both MRIs, whether the January 2002 fall caused a temporary aggravation of a preexisting condition, Dr. Amundson stated:

I think the best way I can explain it, not knowing and only being told the circumstances and not knowing how long the aggravation lasted, is that it could have aggravated her pain syndrome, but anatomically it doesn't appear that it changed the pathology in her spine that we can see.⁸

Dr. Amundson stated that in October 2001, claimant presented with 50 percent back and 50 percent leg pain and he focused on the leg pain component. In April 2002, claimant's pain had shifted to a back pain predominant condition, which was why a diskogram was performed to define her component of back pain and her pain generator for the back pain. In April 2002, claimant had more back pain than leg pain, which could be a natural progression of her condition or the result of an intervening injury.

Dr. Amundson cannot say when the transition of pain occurred between her back and legs. Since he was just made aware of the January 2002 injury at the deposition, all he could say for sure was that the change was sometime between October 24, 2001, and April 3, 2002. He stated that he was "not willing to state with any degree of medical certainty that [the January 2002 incident] caused the shift specifically to predominance of back pain."⁹ All he could state was that claimant had an aggravation of her back pain.

Dr. Clough is a neurosurgeon who saw claimant on November 27, 2001, at the request of respondent and Legion/KGIA. He saw claimant only that one time. After examining claimant, Dr. Clough recommended rest or restrictions from her job activities and a repeat of epidural injections with fluoroscopy. He also recommended evaluation by a physiatrist or pain management physician because of possible depression. He had guarded recommendations of possible surgical options and did not recommend surgery at that time but recommended that claimant exhaust all alternatives before considering surgery.

Dr. Clough was not aware that claimant had a third injury after he saw her in November 2001. Nor did he know that she had undergone an IDET operation and a three-

⁸*Id.* at 25.

⁹*Id.* at 31.

level fusion by Dr. Amundson. However, when asked about claimant's third accident, he stated that she

did not appear to be injured enough that she was off work for the first two injuries so it would have appear [sic] to me that the third injury certainly aggravated or worsened her condition requiring her never to return back to work, which I would say therefore led her to surgery.¹⁰

Dr. Clough reviewed Mary Titterington's task list. He stated that he had reviewed claimant's FCE and was capable of testifying about claimant's task loss even though he had not seen claimant after her January 2002 injury or her surgeries. Of the 17 items on the list, Dr. Clough believed that claimant had lost the ability to perform 11 of the tasks for a 65 percent task loss. Dr. Clough stated that according to the reports he had seen, he considered claimant employable.

Dr. Clough stated that the two surgeries that were performed on claimant were completely different surgeries than were proposed in October 2001. Dr. Amundson's recommended surgery in 2001 was for a three-level laminectomy, and claimant had an IDET procedure and a three-level fusion. He said that in his opinion, a change from leg pain to more back pain after the third accident would be consistent with the change in the surgical recommendation.

Dr. Zimmerman, who is board certified in internal medicine, examined claimant at the request of her attorney on June 11, 2004. Dr. Zimmerman said he took a history from claimant. Claimant did not, however, tell him about her accident of January 3, 2002.

Dr. Zimmerman reviewed claimant's medical records and performed a physical examination of her. Using the *AMA Guides*, he gave claimant a 27 percent body as a whole rating. He opined that the 27 percent rating was solely attributable to her work injuries at respondent. Dr. Zimmerman testified that this rating was pursuant to the *AMA Guides*. In the absence of any contrary expert medical opinion, the Board finds that claimant's functional impairment is 27 percent.

Dr. Zimmerman also gave claimant permanent restrictions in the full sedentary category. In applying his restrictions to a task list prepared by Richard Santner, Dr. Zimmerman opined that claimant was unable to perform 20 of the 22 tasks for a 91 percent task loss. He did not believe that claimant was capable of engaging in substantial gainful employment. Dr. Zimmerman believed claimant would need future treatment in the form of Ibuprofen and, because of the dosage, should be seen by a doctor for quarterly visits.

¹⁰Clough Depo. at 13.

Dr. Zimmerman was only aware of two of claimant's work-related injuries, the April 20, 2001, and June 14, 2001 incidents. Claimant told Dr. Zimmerman that her last day of work was January 3, 2002, but did not tell him why she stopped working on that date. Because he did not know about the January 2002 accident before his deposition was taken, Dr. Zimmerman would not give an opinion on whether claimant's surgeries were necessitated by her earlier accidents or the January 2002 fall. He also would not give an opinion on whether the injuries from the January 2002 fall were temporary aggravations of her preexisting condition. He did, however, state that if claimant had pain immediately following the accident of January 3, 2002, which thereafter dissipated to the level she had before the accident, that would be consistent with a temporary aggravation.

After considering the entire record, in particular the testimony of claimant and of the three physicians whose testimony was taken in this matter, the Board concludes that the January 3, 2002 accident caused only a temporary aggravation of claimant's condition.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bryce D. Benedict dated December 2, 2005, is modified as follows:

An award of compensation is hereby made in favor of claimant, Waunita Smith, and against the respondent, Rossville Valley Manor, and Legion Insurance/KGIA.

Claimant is entitled to 31.14 weeks of temporary total disability compensation at the rate of \$366.93 per week or \$11,426.20 followed by permanent partial disability compensation at the rate of \$366.93 per week not to exceed \$100,000 for an 83.3 percent work disability.

As of March 16, 2006, there would be due and owing to the claimant 31.14 weeks of temporary total disability compensation at the rate of \$366.93 per week in the sum of \$11,426.20 plus 224.72 weeks of permanent partial disability compensation at the rate of \$366.93 per week in the sum of \$82,456.51 for a total due and owing of \$93,882.71, which is ordered paid in one lump sum less amounts previously paid. Thereafter, the remaining balance in the amount of \$6,117.29 shall be paid at the rate of \$366.93 per week until fully paid or until further order from the Director.¹¹

¹¹ Claimant's permanent partial disability Award will be limited to her functional disability while working for respondent, but because of the statutory scheme of accelerated payout, claimant is entitled to the same number of weeks of benefits paid at the same weekly rate during the different post-injury periods whether that period is based upon claimant's 27 percent functional disability followed by the 83.3 percent work disability or whether it is based upon claimant's 83.3 percent work disability alone.

The Board adopts the other orders of the ALJ to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this _____ day of March 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Roger D. Fincher, Attorney for Claimant
 J. Scott Gordon, Attorney for Respondent and its Insurance Carrier Legion/KGIA
 Lynn M. Curtis, Attorney for Respondent and its Insurance Carrier Liberty Mutual
 Darin M. Conklin, Attorney for Kansas Workers Compensation Fund
 Bryce D. Benedict, Administrative Law Judge
 Paula S. Greathouse, Workers Compensation Director